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5 Proposed Counsel for Debtor-in-Possession
BIO365 LLC

6
7 **UNITED STATES BANKRUPTCY COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9 **SANTA ROSA DIVISION**

10 In re

11 BIO365 LLC

12 Debtor

Case No. 23-10180

Chapter 11

**APPLICATION FOR ORDER
SHORTENING TIME FOR NOTICE AND
SPECIALLY SETTING HEARING DATE
ON DEBTOR'S MOTION FOR ENTRY
OF AN ORDER AUTHORIZING, BUT
NOT DIRECTING, DEBTOR TO PAY
WAREHOUSEMAN'S LIEN OF ACME
DISTRIBUTION CENTERS. INC. FOR
RELEASE OF PRODUCT**

Hearing Requested for:

Date: May 3, 2023

Time: 10:30 a.m.

Place:

1300 Clay St, Ctrm 220/Zoom
Oakland, California 94612

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21 Bio365 LLC, debtor and debtor in possession (the "Debtor"), by its proposed attorneys,
22 hereby moves this Court, pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure
23 and Rule 9006-1 of the Bankruptcy Local Rules, for entry of an order substantially in the form
24 attached hereto as Exhibit A, shortening time for service of notice and a hearing with respect to the
25 following motion was filed at Docket No. 47 (the "Warehouse Lien Motion") and limiting notice
26 of such motion:

27 **DEBTOR'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING, BUT**
28 **NOT DIRECTING, DEBTOR TO PAY WAREHOUSEMAN'S LIEN OF**

ACME DISTRIBUTION CENTERS. INC. FOR RELEASE OF PRODUCT

In support of this Application, the Debtor relies on the *Declaration of Robert Marcus in Support of Motion for Entry of an Order Authorizing, but not Directing, Debtor to Pay Warehouseman's Lien of Acme Distribution for Release of Product* (the “Marcus Declaration”), attached as Exhibit A to the Warehouse Lien Motion. In addition, the Debtor respectfully represents as follows:

Background Facts

On April 12, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of California – Santa Rosa Division (the “Bankruptcy Court”), commencing the above-captioned bankruptcy case (the “Bankruptcy Case”). The Bankruptcy Case is pending as a Subchapter V, Chapter 11 case and, as such, no committee or examiner has been appointed in the Bankruptcy Case.

I. Facts Relevant to Motion

On April 12, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of California – Santa Rosa Division (the “Bankruptcy Court”), commencing the above-captioned bankruptcy case (the “Bankruptcy Case”). The Bankruptcy Case is pending as a Subchapter V, Chapter 11 case and, as such, no committee or examiner has been appointed in the Bankruptcy Case.

The Debtor currently manufactures nine (9) unique, trademarked, and patented living soil products that are custom formulated for indoor, light deprivation, and outdoor cultivators. However, prior to formulating these first-to-market products, the four co-founders of the Debtor set a mutual goal in 2015 to ensure that children and future generations will have access to abundant, healthy food, and high-quality medicine. To do so, they needed to find solutions to the intermingled threat of dwindling topsoil, poor crop quality, and the instability of climate change. These founders determined that “Controlled Environment Agriculture” – or CEA – can be an important mechanism to help solve the growing threats to agriculture and the climate. The Debtor’s CEA breakthroughs

1 made an immediate impact on the marketplace. In particular, given the CEA advances through the
2 Debtor's proprietary, activated, and aged bioCHARGE™, the Debtor's products became the
3 preferred soils in the controlled environment industry to ensure such products are available year-
4 round.

5 The Debtor filed this Bankruptcy Case to restructure and streamline its operations and
6 propose a plan of reorganization to shed its burdensome operational deficiencies and emerge a
7 healthier company buoyed by the strength of its unique product. It is the Debtor's intention to
8 propose a plan of reorganization that will permit the Debtor to maximize recoveries for its legitimate
9 creditors, ensure the Debtor is only paying for the value it has received on its loans and contracts,
10 and reach an EBITDA positive position within 12-18 months after emerging from bankruptcy.

11 The Debtor also intends to continue to supply its loyal customers with its proprietary,
12 activated, and aged bioCHARGE™. To service one of the Debtor's most consistent customers (the
13 "Customer"), the Debtor contracts with Acme Distribution Centers, Inc. ("Acme") to warehouse,
14 store, and distribute the Debtor's product in Acme's warehouse facility in Denver, Colorado
15 pursuant to a *Rate Quotation and Contract* dated January 15, 2020 (the "Contract"). Pursuant to the
16 Contract, Acme is required to store quantities of the Debtor's soil product for delivery to the
17 Customer as needed on a weekly basis. In exchange, the Debtor pays Acme for storage and delivery
18 charges on a per pallet basis and, pursuant to UCC-7, Acme holds a general warehouse lien over all
19 product its possession.

20 On the Petition Date, in the ordinary course of business, Acme was in possession of certain
21 product of the Debtor for delivery to the Customer. The Debtor owes Acme \$9,153.37 for storage
22 of the product through May 2023. The product in possession of Acme is critical for Debtor's on-
23 going relationship with Customer and is worth more to the Debtor at resale value to Customer than
24 the amount owed to Acme. Since the Petition Date, Robert Marcus (the "CRO") has been able to
25 fulfill Customer's purchase order through piecemeal provision of products from the Stockton
26 Facility and Cortland Facility; however, now, it is critical that the Debtor obtain possession of the
27 products in Acme's possession for resale to Customer. The Debtor has attempted to provide
28 alternative methods to ensure payment to Acme, including substitution of collateral and post-

1 petition deposit, but Acme has insisted on payment pursuant to its UCC-7 warehouseman's lien
2 against the product.

3 The Debtor will net more from the sale of product in possession of Acme to Customer
4 than it will cost to pay Acme's prepetition warehouseman's lien. Furthermore, at this time, the
5 Debtor does not currently have enough product to service Customer's on-going needs while
6 providing product to its other customers. The payment of Acme's secured prepetition claim will
7 benefit the bankruptcy estate and ensure the Debtor's relationship with Customer remains strong
8 and Debtor's operations continue throughout this restructuring process.

9 **II. Payment of Warehouseman's Lien**

10 The payment of Acme's prepetition warehouseman's lien in the amount of \$9,153.37 for the
11 release of Debtor's product for sale to Customer is a proper exercise of the Debtor's business
12 judgment. Section 7209(a) of the California Commercial Code provides Acme with a
13 warehouseman's lien against the property in its possession. Cal. Comm. Code. § 7209(a).
14 Furthermore, Acme's general lien attaches to all of Debtor's goods that are in its possession and
15 secures all of Debtor's obligations to Acme. *Id.* Acme would lose its lien against the product if it
16 voluntarily released the product. Cal. Comm. Code § 7209(e).

17 Acme has refused to release its lien against the product held until it is paid in full. This
18 refusal is justified and permitted under the California Commercial Code. However, the release of
19 the product subject to the lien is critical to the Debtor's successful reorganization and on-going
20 operations. The Debtor requires this product to fulfill Customer's weekly orders and ensure that
21 Customer does not stop purchasing from Debtor or seek an inferior product from a competitor. The
22 relief required will maintain the Debtor's viability as a going-concern, its critical relationship with
23 Customer, and help maximize the potential for recovery for unsecured creditors. The value Debtor
24 will receive from the product exceeds the \$9,153.37 cost to obtain the product from Acme. As such,
25 the payment of the prepetition warehouseman's lien in the amount of \$9,153.37 is a proper exercise
26 of the Debtor's business judgment.

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1 ability to fill customer orders. The Debtor has significantly more than \$9,153.37 on hand and sale
2 of the product Customer will provide a greater return to the Debtor.

3 **Efforts to Speak with Major Constituencies**

4 The Debtor filed the Warehouse Lien Motion on a Sunday. The Debtor reached out to the
5 U.S. Trustee and Subchapter V Trustee after the Warehouse Lien Motion was filed. The
6 Subchapter V Trustee has no objection to shortened time. The Office of the U.S. Trustee has not
7 yet responded to the relief requested; however, the Debtor will reach out again on Monday morning.
8 The Debtor has not had an opportunity to communicate the relief requested with other potentially
9 interested parties, including any secured creditors. The Debtor does not believe that any
10 constituency will be prejudiced by the granting of the relief requested herein. However, the Debtor
11 is prepared to serve notice of the hearing and the Warehouse Lien Motion on the U.S. Trustee,
12 Subchapter V Trustee, secured creditors, Acme, and seven (7) largest unsecured creditors, e-mail
13 or such other method as ordered.

14 **Conclusion**

15 WHEREFORE, the Debtor requests that the Court grant this Application and enter an order
16 in the form attached hereto as Exhibit A shortening time and scheduling the hearing on the
17 Warehouse Lien Motion on Wednesday, May 3, 2023 at 10:30 a.m. or such time as is convenient
18 for the Court or as soon thereafter as the Warehouse Lien Motion may be heard.

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20 Dated: May 1, 2023

CLARK HILL PLC

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22 By: /s/ Kevin H. Morse
23 Proposed Counsel for Debtor
24 bio365 LLC
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**[PROPOSED] ORDER
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20 The Court having considered the application ("Application") filed by Bio365 LLC, debtor
21 and debtor in possession (the "Debtor"), for an order shortening time for service of notice and a
22 hearing with respect *Motion for Entry of an Order Authorizing, but not Directing, Debtor to Pay*
23 *Warehouseman's Lien of Acme Distribution for Release of Product* [Docket No. 47] (the
24 "Warehouse Lien Motion"); having considered all pleadings and evidence in connection the
25 Application, including the *Declaration of Robert Marcus in Support of Motion for Entry of an Order*
26 *Authorizing, but not Directing, Debtor to Pay Warehouseman's Lien of Acme Distribution for*
27 *Release of Product*, attached to the Warehouse Lien Motion as **Exhibit A**, and good cause appearing
28 for the relief requested in the Application;

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IT IS HEREBY ORDERED that:

1. The Application is granted.

2. The time for notice on the Warehouse Lien Motion is hereby shortened. The hearing will be held on May 3, 2023 at ____: _____.m.

3. The Debtor shall provide notice of the hearing on the Warehouse Lien Motion via _____ on the Office of the U.S. Trustee, Subchapter V Trustee, secured creditors, the 7 largest unsecured creditors, and Acme (as defined in the Warehouse Lien Motion).

4. Any opposition to the Warehouse Lien Motion shall be heard at the hearing.

****END OF PROPOSED ORDER****

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**DECLARATION OF KEVIN H. MORSE
IN SUPPORT OF ORDER SHORTENING
TIME FOR NOTICE AND SPECIALLY
SETTING HEARING DATE ON
DEBTOR'S MOTION FOR ENTRY OF
AN ORDER AUTHORIZING, BUT NOT
DIRECTING, DEBTOR TO PAY
WAREHOUSEMAN'S LIEN OF ACME
DISTRIBUTION CENTERS. INC. FOR
RELEASE OF PRODUCT**

Requested Hearing:

Date: May 3, 2023

Time: 10:30 a.m.

Place:

1300 Clay St, Ctrm 220/Zoom
Oakland, California 94612

21 I, Kevin H. Morse, declare:

22 1. I am an attorney admitted to practice before the Court. I am a member with the law
23 firm of Clark Hill PLC (operating in California as Clark Hill LLC) ("Clark Hill"), proposed counsel
24 for the bio365 LLC, the debtor and debtor-in-possession (the "Debtor") in the above-captioned
25 Chapter 11 case (the "Bankruptcy Case").

26 2. This declaration is provided in support of the *Application for Order Shortening Time*
27 *for Notice and Specially Setting Hearing Date on Debtor's Motion for Entry of an Order*
28 *Authorizing, but not Directing, Debtor to Pay Warehouseman's Lien of Acme Distribution for*

Release of Product [Docket No. 47] (the “Warehouse Lien Motion”) filed in the Bankruptcy Case on April 30, 2023.

3. I am authorized by Clark Hill to make this declaration on its behalf in support of the Application. Except for those statements made upon information and belief, I have personal knowledge of the facts set forth herein, and could and would testify competently thereto if called as a witness.

4. The Warehouse Lien Motion was filed on Sunday, April 30, 2023. Since filing the Warehouse Lien Motion, I sent an e-mail to the Office of the United States Trustee and the Subchapter V Trustee with a copy of the Warehouse Lien Motion. The Office of the United States Trustee has not yet responded. The Subchapter V Trustee has no objection to shortened notice. I was not able to communicate with other potentially interested parties, including any secured creditors. We previously made Acme aware that the Warehouse Lien Motion would be filed shortly. I will also reach out to the Office of the United States Trustee and Subchapter V Trustee again on Monday morning.

5. Clark Hill is prepared, as required, to serve notice of the hearing and the Warehouse Lien Motion in the manner prescribed by the Court on the Office of the U.S. Trustee, Subchapter V Trustee, secured creditors, the 7 largest unsecured creditors, and Acme.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 1, 2023, at Chicago, Illinois.

/s/ Kevin H. Morse

Kevin H. Morse